IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 287 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PANKAJ AGRO PROTENIX LTD.

Versus

PFIZER CORPORATION

Appearance:

1. Appeal from Order No. 287 of 2001

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/08/2001

ORAL JUDGEMENT

Respondent plaintiff company filed Regular Civil Suit No. 4/92 before the Civil Court at Rajkot, wherein two applications Ex. 35 and 41 were filed, below which

necessary orders were passed by the Civil Court. Later on application Ex.47 came to be filed in that Suit under the provisions of Order 11 Rule 21 CPC and a prayer was made for striking off the defence of the defendant - the present appellant. The said application was disposed of by the Civil Court on 30.6.2001. In the operative part of the order the defendant - present appellant was directed to produce the documents as per the order passed below Ex.35 and 41 on or before 7.7.2001, failing which it was ordered that the defence of the defendant will automatically stand struck off under the provisions of Order 11, Rule 21 CPC. This order is challenged by the present appellant in this AO.

The learned Counsel Shri Shah for the appellant original defendant raised two submissions (1) that the non-production of documents is not covered under the provisions of Order 11, Rule 21 CPC and therefore the impugned order is required to be quashed, (2) that the Civil Court had no jurisdiction to pass consequential or conditional order as per the operative part of the order.

In support of this submission, Mr. Shah has relied upon the Division Bench judgement of this Court in Harkisandas Chunilal Chokshi Vs. Prabhavatiben, reported in 14 GLR 438.

First submission raised by Mr. Shah that non-production of documents by the defendant is not covered under provisions of Order 11, Rule 21 has no substance. According to Mr. Shah, there are three conditions, namely - enquiry, discovery or inspection as provided under Rule 21(1), but non-production of the documents is not covered. Orders were already passed to produce the required documents by the Court below Ex. 35 and 41. Therefore, this submission of Mr. Shah cannot be sustained. Hence, it is rejected.

The second submission was that the Court had no jurisdiction to pass consequential or conditional order has also no substance. It is an innocuous order whereby the Court has only directed the defendant - present appellant to comply with its earlier order passed below Ex.35 and 41. Reliance was placed by Mr. Shah upon the Division Bench judgement of this Court in case of Harkisandas Chunilal Chokshi Vs. Prabhavatiben, reported in 14 GLR 438. Teh said judgement was rendered by the Division Bench of this Court in the matter arising out of the Bombay Rent Act, where provisions of Section 11(4) of the Rent Act was considered. I fail to udnerstand as to how that judgement will have any application to the facts

of the present case. The aforesaid judgement was delivered by the Division Bench of this Court under the Rent Act, whereas Civil Procedure Code is a complete Code itself under which procedure is prescribed.

Having carefully gone through the impugned order passed by the learned Joint District Judge, Rajkot on 30.6.2001 below Ex.47 in RCS No. 4/92, it clearly appears that the present appellant - original defendant had produced annual reports before the Court in pursuance of the earlier orders but for the reasons best known to it, it has not produced necessary accounts books starting from the period 1992 onwards. If they can produce the annual records, then there should not have been any difficulty on their part in producing the accounts books from 1992 onwards.

In view of the above discussion, I do not find any substance or merits in the AO and accordingly it fails and is dismissed with no order as to costs. Civil Application also stands disposed of.

At this stage, an unusual request was made by Mr. Shah to continue the interim relief granted by the Civil Court whereby Civil Court had continued the earlier interim relief inspite of its impugned order dated 30.6.2001. According to Mr. Shah, the trial Court has protected the appellant company till today in the sense that it has granted stay against its own order upto 23.8.2001. He wants to carry the matter to the higher forum and therefore, he wants some more time from this Court. This request cannot be granted for the simple reason that when this Court was not at all prima-facie convinced that the appellant had any case, then there is no question of continuing the interim relief granted by the trial Court. Hence, this request is rejected.

(B.J.Shethna, J.)

*/Mohandas